

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DARNELL GREEN, 07B0547,

Petitioner,

-v-

SHEEHAN,

Respondent.



-PS/CD-O-

DECISION AND ORDER
12-CV-0665Sc

Petitioner Darnell Green, proceeding *pro se*, filed a petition pursuant to 28 U.S.C. § 2254 and was directed to more specifically address the timeliness of the petition. Mr. Green has responded with documents filed on August 29, 2012 and a supplement filed on September 6, 2012. Petitioner has attempted to meet his burden to address the appropriateness of equitable tolling for mental illness. He also asserts that he is actually innocent of the charge of manslaughter, of which he was convicted. Petitioner has offered specific allegations of his general condition, diagnosed with bi-polar disorder and mental retardation, a history of apparent traumatic brain injury associated with a car accident that left him in a coma for an extended period, combined with functional illiteracy at the time of his conviction. Petitioner has further offered medical records, filed in a restricted manner, that indicate that he was admitted to the Central New York Psychiatric Center, and was functioning at an extremely low level of competency, for at least

part of the time during which his conviction became final and when he would have filed a timely petition, between 2009 and 2010, and 2012 when he did file this petition. With deference to petitioner's *pro se* status, his diagnoses and the difficulty of demonstrating through appropriate records whether his time to file this petition should be tolled either because of his incapacity or because of his claim of actual innocence, and in the interests of judicial economy, the respondents are directed to answer this petition and address petitioner's tolling arguments.

IT HEREBY IS ORDERED as follows:

1. Respondent shall file and serve an **answer** to the petition, in accordance with Rules 4 and 5 of the Rules Governing Section 2254 Cases in the United States District Courts, no later than **November 30, 2012**. Further, the answer shall address petitioner's tolling arguments. It shall state whether a trial or any pre-trial or post-trial evidentiary proceeding was conducted. If any such proceeding was conducted, under the authority of Rule 4, the Court hereby directs respondent to provide to the Court the transcript of the proceeding, together with any record(s) of, and documents relating to, such proceeding, and such documents will be filed in the official record of this case.

Respondent also shall file and serve by the above date a **memorandum of law** addressing each of the issues raised in the petition and including citations of relevant supporting authority.

Within thirty (30) days of the date this order is served upon the custodian of the records, the Clerk of Court or any other official having custody of the records of the proceedings in County Court at issue now before this Court shall submit such records to respondent or the respondent's duly authorized representative.

If petitioner appealed from the judgment of conviction or from an adverse judgment or order in a post-conviction proceeding, under the authority of Rule 4, the Court hereby directs respondent to provide to the Court a copy of the briefs and record on appeal and the opinions of the appellate courts, if any, and such documents will be filed in the official record of this case.

Petitioner shall have thirty (30) days upon receipt of the answer to file a written response to the answer and memorandum of law.

Within thirty (30) days of the date this order is filed with the Clerk of Court, respondent may file a motion for a more definite statement or a motion to dismiss the petition, accompanied by appropriate exhibits which demonstrate that an answer to the petition is unnecessary. The timely filing of such motion shall extend the time for filing an answer for fourteen (14) days, but the failure of the Court to act upon the motion within that time shall not further extend the time for filing an answer.

2. The Clerk of Court shall serve a copy of the petition, together with a copy of this order, by certified mail, upon respondent Superintendent of Five

Points Correctional Facility and upon the Office of the New York State Attorney General, Federal Habeas Unit, 120 Broadway, 12th Floor, New York, New York 10271-0332. To advise appropriate Erie County officials of the pendency of this proceeding, the Clerk of Court shall also mail a copy of this order to the District Attorney of Erie County.

**PETITIONER MUST FORWARD A COPY OF ALL FUTURE PAPERS
AND CORRESPONDENCE TO THE ATTORNEY APPEARING FOR
RESPONDENT.**

IT IS SO ORDERED.

A handwritten signature in cursive script, reading "Richard J. Arcara", is written over a horizontal line.

HONORABLE RICHARD J. ARCARA
DISTRICT COURT

Dated: Oct. 18, 2012